

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 07-CV-138

In Regard to the Matter of:

Bayside State Prison
Litigation

Opinion and Report
of the
Special Master

VICTONIO GOLDEN,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * * *
WEDNESDAY, FEBRUARY 13, 2008
* * * * *

BEFORE THE HONORABLE JOHN W. BJSSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, INC.
Certified Court Reporting & Videoconferencing
251 South White Horse Pike
Audubon, New Jersey 08106
856-546-1100

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10 A P P E A R A N C E S:

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Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
Notary Public of the State of New Jersey at the
United States District Court House, One Gerry Plaza,
Camden, New Jersey, 08102, commencing at 9:30 AM.

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1 JUDGE BISSELL: I turn now to the
2 decision regarding the case brought by Victorio
3 Golden, docket number 08-138 and ask that that action
4 also be reopened for the purpose of generating this
5 transcript.

6 Once again, I am proceeding pursuant to
7 the parameters and perimeters of instructions to me
8 as set forth in the Order of Reference to a Special
9 Master and the Special Master Agreement.

10 I incorporate by reference the jury
11 instructions as set forth in the Walker and Mojias
12 charges as setting forth the underlying principles of
13 law against which these facts have been measured to
14 the extent they are applicable to the particular
15 issues in this case. And this decision is being
16 issued in compliance with the obligation of a written
17 report as contemplated by the Special Master
18 Agreement, employing Local Civil Rule 52.1 for the
19 issuance thereof.

20 Victorio Golden describes a hit on his
21 head and a punch in his eye as having happened to him
22 in lockup upon his return from a court line date late
23 in August and shortly before his release from Bayside
24 on or about September 5, 1997.

25 The injuries were described as a hit on

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1 the left back side of his head causing scarring, and
2 a punch to the left eye. And, indeed, those injuries
3 are both described and mentioned in the relatively
4 contemporaneous written statements that he gave which
5 have been entered into evidence as D-40 and D-41.

6 However, there are significant
7 discrepancies between the descriptions in those
8 contemporaneous documents and his testimony here in
9 court.

10 He does, indeed, associate the events
11 involved with the officer who was with him on his
12 court line date as well as on previous occasions.
13 However, in those documents, he does not place his
14 eye injury at the time stated in his testimony here
15 in court, but rather at a considerably earlier time
16 period in the month of August of 1997.

17 There are other discrepancies between
18 the report and his testimony here in court which I'm
19 not going to dwell on at any great length.

20 His testimony in court, therefore, was
21 really impeached by placing the events of both the
22 hit which caused the bleeding on his head and his eye
23 injury as taking place back in the lockup upon his
24 return from the court line proceeding rather than
25 earlier.

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1 Once again, there are other incredible
2 aspects of his testimony. The duration and severity
3 of his headaches for a ten-and-a-half year period,
4 resulting from a single blow to the head such as
5 this, I do not find credible.

6 And I might say I did examine the scar,
7 its noticeable, it's in the area that he described, I
8 have no reason to think that it didn't occur somehow
9 and somewhere, but I'll have more to say about that
10 later.

11 Also, the delayed designation of
12 Officer Walker and the absence of any credible
13 evidence to identify him which, of course, led to my
14 direction that no matter what the outcome of this
15 case there would be no recommended judgment against
16 Officer Walker, has some impact upon the Plaintiff's
17 credibility generally.

18 As far as this record is concerned, the
19 reference to Officer Walker came out of the blue.
20 Indeed, in reviewing the transcript of post trial
21 motions, apparently the references before then were
22 to an Officer Morris who wasn't even mentioned here.

23 To reiterate, I find that the evidence
24 which he endeavors to describe here in court as
25 having taken place only upon his return to the

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1 lockup, after his court line hearing, is fatally
2 inconsistent with the contemporaneous statements
3 which he offered regarding the placing of both his
4 head and eye injuries on a time line.

5 I find the testimony here in court
6 contrived, albeit for no particularly apparent
7 reason. But I have to measure it as it comes in
8 terms of its credibility and whether the plaintiff
9 has discharged his burden of proof by a preponderance
10 of the credible evidence. That trial testimony was
11 not credible and was impeached by his prior
12 statements which, of course, were offered for
13 impeachment purposes. Even though the eye injury was
14 observed upon his release and led to the generation
15 of D-40 and D-41 and the interviews by Internal
16 Affairs, I conclude nevertheless that there was no
17 adequate competent proof of exactly how, when, why
18 and by whom those injuries, in fact, occurred.

19 Finally, although not every item of
20 evidence has been discussed in this opinion/report,
21 all evidence presented to the Special Master was
22 reviewed and considered.

23 This plaintiff, therefore, has failed
24 to discharge his burden of proof and it will be my
25 recommendation in this written report that Mr. Golden

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1 has not sustained his Eighth Amendment claims and
2 hence will have no recovery against anyone in his
3 case. I recommend in this report that the District
4 Court enter a verdict of no cause for action.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.

Theresa O. Mastroianni

Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. XT0857

Date: February 19, 2008

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